

HB 1439 - S COMM AMD

By Committee on Government Operations & Elections

ADOPTED 03/03/2006

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 43.19.1906 and 2002 c 332 s 4 are each amended to
4 read as follows:

5 Insofar as practicable, all purchases and sales shall be based on
6 competitive bids, and a formal sealed, electronic, or web-based bid
7 procedure, subject to RCW 43.19.1911, shall be used as standard
8 procedure for all purchases and contracts for purchases and sales
9 executed by the state purchasing and material control director and
10 under the powers granted by RCW 43.19.190 through 43.19.1939. This
11 requirement also applies to purchases and contracts for purchases and
12 sales executed by agencies, including educational institutions, under
13 delegated authority granted in accordance with provisions of RCW
14 43.19.190 or under RCW 28B.10.029. However, formal sealed, electronic,
15 or web-based competitive bidding is not necessary for:

16 (1) Emergency purchases made pursuant to RCW 43.19.200 if the
17 sealed bidding procedure would prevent or hinder the emergency from
18 being met appropriately;

19 (2) Purchases not exceeding thirty-five thousand dollars, or
20 subsequent limits as calculated by the office of financial management:
21 PROVIDED, That the state director of general administration shall
22 establish procedures to assure that purchases made by or on behalf of
23 the various state agencies shall not be made so as to avoid the thirty-
24 five thousand dollar bid limitation, or subsequent bid limitations as
25 calculated by the office of financial management: PROVIDED FURTHER,
26 That the state purchasing and material control director is authorized
27 to reduce the formal sealed bid limits of thirty-five thousand dollars,
28 or subsequent limits as calculated by the office of financial
29 management, to a lower dollar amount for purchases by individual state
30 agencies if considered necessary to maintain full disclosure of

1 competitive procurement or otherwise to achieve overall state
2 efficiency and economy in purchasing and material control. Quotations
3 from three thousand dollars to thirty-five thousand dollars, or
4 subsequent limits as calculated by the office of financial management,
5 shall be secured from at least three vendors to assure establishment of
6 a competitive price and may be obtained by telephone or written
7 quotations, or both. The agency shall invite at least one quotation
8 each from a certified minority and a certified women-owned vendor who
9 shall otherwise qualify to perform such work. Immediately after the
10 award is made, the bid quotations obtained shall be recorded and open
11 to public inspection and shall be available by telephone inquiry. A
12 record of competition for all such purchases from three thousand
13 dollars to thirty-five thousand dollars, or subsequent limits as
14 calculated by the office of financial management, shall be documented
15 for audit purposes. Purchases up to three thousand dollars may be made
16 without competitive bids based on buyer experience and knowledge of the
17 market in achieving maximum quality at minimum cost;

18 (3) Purchases which are clearly and legitimately limited to a
19 single source of supply and purchases involving special facilities,
20 services, or market conditions, in which instances the purchase price
21 may be best established by direct negotiation;

22 (4) Purchases of insurance and bonds by the risk management
23 division under RCW 43.41.310;

24 (5) Purchases and contracts for vocational rehabilitation clients
25 of the department of social and health services: PROVIDED, That this
26 exemption is effective only when the state purchasing and material
27 control director, after consultation with the director of the division
28 of vocational rehabilitation and appropriate department of social and
29 health services procurement personnel, declares that such purchases may
30 be best executed through direct negotiation with one or more suppliers
31 in order to expeditiously meet the special needs of the state's
32 vocational rehabilitation clients;

33 (6) Purchases by universities for hospital operation or biomedical
34 teaching or research purposes and by the state purchasing and material
35 control director, as the agent for state hospitals as defined in RCW
36 72.23.010, and for health care programs provided in state correctional
37 institutions as defined in RCW 72.65.010(3) and veterans' institutions

1 as defined in RCW 72.36.010 and 72.36.070, made by participating in
2 contracts for materials, supplies, and equipment entered into by
3 nonprofit cooperative hospital group purchasing organizations;

4 (7) Purchases for resale by institutions of higher education to
5 other than public agencies when such purchases are for the express
6 purpose of supporting instructional programs and may best be executed
7 through direct negotiation with one or more suppliers in order to meet
8 the special needs of the institution;

9 (8) Purchases by institutions of higher education not exceeding
10 thirty-five thousand dollars: PROVIDED, That for purchases between
11 three thousand dollars and thirty-five thousand dollars quotations
12 shall be secured from at least three vendors to assure establishment of
13 a competitive price and may be obtained by telephone or written
14 quotations, or both. For purchases between three thousand dollars and
15 thirty-five thousand dollars, each institution of higher education
16 shall invite at least one quotation each from a certified minority and
17 a certified women-owned vendor who shall otherwise qualify to perform
18 such work. A record of competition for all such purchases made from
19 three thousand to thirty-five thousand dollars shall be documented for
20 audit purposes; and

21 (9) Negotiation of a contract by the department of transportation,
22 valid until June 30, 2001, with registered tow truck operators to
23 provide roving service patrols in one or more Washington state patrol
24 tow zones whereby those registered tow truck operators wishing to
25 participate would cooperatively, with the department of transportation,
26 develop a demonstration project upon terms and conditions negotiated by
27 the parties.

28 Beginning on July 1, 1995, and on July 1 of each succeeding odd-
29 numbered year, the dollar limits specified in this section shall be
30 adjusted as follows: The office of financial management shall
31 calculate such limits by adjusting the previous biennium's limits by
32 the appropriate federal inflationary index reflecting the rate of
33 inflation for the previous biennium. Such amounts shall be rounded to
34 the nearest one hundred dollars. However, the three thousand dollar
35 figure in subsections (2) and (8) of this section may not be adjusted
36 to exceed five thousand dollars.

1 **Sec. 2.** RCW 43.19.1908 and 1994 c 300 s 2 are each amended to read
2 as follows:

3 Competitive bidding required by RCW 43.19.190 through 43.19.1939
4 shall be solicited by public notice, and through the sending of notices
5 by mail, electronic transmission, or other means to bidders on the
6 appropriate list of bidders who shall have qualified by application to
7 the division of purchasing. Bids may be solicited by the purchasing
8 division from any source thought to be of advantage to the state. All
9 bids shall be in (~~writing~~) written or electronic form and conform to
10 rules of the division of purchasing.

11 **Sec. 3.** RCW 43.19.1911 and 2005 c 204 s 5 are each amended to read
12 as follows:

13 (1) Preservation of the integrity of the competitive bid system
14 dictates that after competitive bids have been opened, award must be
15 made to that responsible bidder who submitted the lowest responsive bid
16 pursuant to subsections (7) and (9) of this section, unless there is a
17 compelling reason to reject all bids and cancel the solicitation.

18 (2) Every effort shall be made to anticipate changes in a
19 requirement before the date of opening and to provide reasonable notice
20 to all prospective bidders of any resulting modification or
21 cancellation. If, in the opinion of the purchasing agency, division,
22 or department head, it is not possible to provide reasonable notice,
23 the published date for receipt of bids may be postponed and all known
24 bidders notified. This will permit bidders to change their bids and
25 prevent unnecessary exposure of bid prices. In addition, every effort
26 shall be made to include realistic, achievable requirements in a
27 solicitation.

28 (3) After the opening of bids, a solicitation may not be canceled
29 and resolicited solely because of an increase in requirements for the
30 items being acquired. Award may be made on the initial solicitation
31 and an increase in requirements may be treated as a new acquisition.

32 (4) A solicitation may be canceled and all bids rejected before
33 award but after bid opening only when, consistent with subsection (1)
34 of this section, the purchasing agency, division, or department head
35 determines in writing that:

36 (a) Unavailable, inadequate, ambiguous specifications, terms,
37 conditions, or requirements were cited in the solicitation;

- 1 (b) Specifications, terms, conditions, or requirements have been
2 revised;
- 3 (c) The supplies or services being contracted for are no longer
4 required;
- 5 (d) The solicitation did not provide for consideration of all
6 factors of cost to the agency;
- 7 (e) Bids received indicate that the needs of the agency can be
8 satisfied by a less expensive article differing from that for which the
9 bids were invited;
- 10 (f) All otherwise acceptable bids received are at unreasonable
11 prices or only one bid is received and the agency cannot determine the
12 reasonableness of the bid price;
- 13 (g) No responsive bid has been received from a responsible bidder;
14 or
- 15 (h) The bid process was not fair or equitable.
- 16 (5) The agency, division, or department head may not delegate his
17 or her authority under this section.
- 18 (6) After the opening of bids, an agency may not reject all bids
19 and enter into direct negotiations to complete the planned acquisition.
20 However, the agency can enter into negotiations exclusively with the
21 lowest responsible bidder in order to determine if the lowest
22 responsible bid may be improved. Until December 31, 2009, for
23 purchases requiring a formal bid process the agency shall also enter
24 into negotiations with and may consider for award the lowest
25 responsible bidder that is a vendor in good standing, as defined in RCW
26 43.19.525. An agency shall not use this negotiation opportunity to
27 permit a bidder to change a nonresponsive bid into a responsive bid.
- 28 (7) In determining the lowest responsible bidder, the agency shall
29 consider any preferences provided by law to Washington products and
30 vendors and to RCW 43.19.704, and further, may take into consideration
31 the quality of the articles proposed to be supplied, their conformity
32 with specifications, the purposes for which required, and the times of
33 delivery.
- 34 (8) Each bid with the name of the bidder shall be entered of record
35 and each record, with the successful bid indicated, shall, after
36 letting of the contract, be open to public inspection. Bid prices
37 shall not be disclosed during electronic or web-based bidding before
38 the letting of the contract.

1 (9) In determining "lowest responsible bidder", in addition to
2 price, the following elements shall be given consideration:

3 (a) The ability, capacity, and skill of the bidder to perform the
4 contract or provide the service required;

5 (b) The character, integrity, reputation, judgment, experience, and
6 efficiency of the bidder;

7 (c) Whether the bidder can perform the contract within the time
8 specified;

9 (d) The quality of performance of previous contracts or services;

10 (e) The previous and existing compliance by the bidder with laws
11 relating to the contract or services;

12 (f) Such other information as may be secured having a bearing on
13 the decision to award the contract: PROVIDED, That in considering bids
14 for purchase, manufacture, or lease, and in determining the "lowest
15 responsible bidder," whenever there is reason to believe that applying
16 the "life cycle costing" technique to bid evaluation would result in
17 lowest total cost to the state, first consideration shall be given by
18 state purchasing activities to the bid with the lowest life cycle cost
19 which complies with specifications. "Life cycle cost" means the total
20 cost of an item to the state over its estimated useful life, including
21 costs of selection, acquisition, operation, maintenance, and where
22 applicable, disposal, as far as these costs can reasonably be
23 determined, minus the salvage value at the end of its estimated useful
24 life. The "estimated useful life" of an item means the estimated time
25 from the date of acquisition to the date of replacement or disposal,
26 determined in any reasonable manner. Nothing in this section shall
27 prohibit any state agency, department, board, commission, committee, or
28 other state-level entity from allowing for preferential purchase of
29 products made from recycled materials or products that may be recycled
30 or reused.

31 NEW SECTION. **Sec. 4.** A new section is added to chapter 39.04 RCW
32 to read as follows:

33 (1) Any state agency, city with a population greater than one
34 hundred thousand, or counties with a population greater than five
35 hundred thousand executing public works using a competitive bidding
36 process cannot reject all bids after opening unless there is a
37 compelling reason.

1 (2) Every effort shall be made to anticipate changes in a
2 requirement before the date of opening and to provide reasonable notice
3 to all prospective bidders of any resulting modification or
4 cancellation. If, in the opinion of the director or agency head or the
5 appropriate city or county contract authority, it is not possible to
6 provide reasonable notice, the published date for receipt of bids may
7 be postponed and all known bidders notified. This will permit bidders
8 to change their bids and prevent unnecessary exposure of bid prices.
9 In addition, every effort shall be made to include realistic,
10 achievable requirements in a bid solicitation.

11 (3) After the opening of bids, a solicitation may not be canceled
12 and resolicited solely because of an increase in requirements for the
13 items being acquired. Award may be made on the initial solicitation
14 and an increase in requirements may be treated as a new acquisition.

15 (4) A solicitation may be canceled and all bids rejected before
16 award but after bid opening only when, consistent with subsection (1)
17 of this section, the state, city, or county determines in writing that:

18 (a) Unavailable, inadequate, ambiguous specifications, terms,
19 conditions, or requirements were cited in the solicitation;

20 (b) Specifications, terms, conditions, or requirements have been
21 revised;

22 (c) The services being contracted for are no longer required;

23 (d) The solicitation did not provide for consideration of all
24 factors of cost to the agency, city, or county;

25 (e) Bids received indicate that the needs of the state, city, or
26 county can be satisfied by a less expensive article differing from that
27 for which the bids were invited;

28 (f) All otherwise acceptable bids received are at unreasonable
29 prices or only one bid is received and the agency, city, or county
30 cannot determine the reasonableness of the bid price;

31 (g) No responsive bid has been received from a responsible bidder;
32 or

33 (h) The bid process was not fair or equitable.

34 (5) The state agency head or city or county contract authority may
35 not delegate his or her authority under this section.

36 NEW SECTION. **Sec. 5.** A new section is added to chapter 39.29 RCW
37 to read as follows:

1 (1) Any agency or institution of state government procuring
2 personal services using a competitive solicitation process cannot
3 reject all solicitations after opening unless there is a compelling
4 reason.

5 (2) Every effort shall be made to anticipate changes in a
6 requirement before the date of opening and to provide reasonable notice
7 to all prospective bidders of any resulting modification or
8 cancellation. If, in the opinion of the director or agency head, it is
9 not possible to provide reasonable notice, the published date for
10 receipt of bids may be postponed and all known bidders notified. This
11 will permit bidders to change their bids and prevent unnecessary
12 exposure of bid prices. In addition, every effort shall be made to
13 include realistic, achievable requirements in a solicitation.

14 (3) After the opening of bids, a solicitation may not be canceled
15 and resolicited solely because of an increase in requirements for the
16 items being acquired. Award may be made on the initial solicitation
17 and an increase in requirements may be treated as a new acquisition.

18 (4) A solicitation may be canceled and all bids rejected before
19 award but after bid opening only when, consistent with subsection (1)
20 of this section, the agency determines in writing that:

21 (a) Unavailable, inadequate, ambiguous specifications, terms,
22 conditions, or requirements were cited in the solicitation;

23 (b) Specifications, terms, conditions, or requirements have been
24 revised;

25 (c) The services being contracted for are no longer required;

26 (d) The solicitation did not provide for consideration of all
27 factors of cost to the agency;

28 (e) Bids received indicate that the needs of the agency can be
29 satisfied by a less expensive article differing from that for which the
30 bids were invited;

31 (f) All otherwise acceptable bids received are at unreasonable
32 prices or only one bid is received and the agency cannot determine the
33 reasonableness of the bid price;

34 (g) No responsive bid has been received from a responsible bidder;
35 or

36 (h) The bid process was not fair or equitable.

37 (5) The agency head may not delegate his or her authority under
38 this section.

1 NEW SECTION. **Sec. 6.** A new section is added to chapter 43.105 RCW
2 to read as follows:

3 (1) The board, or other agencies and institutions of state
4 government the board delegates authority to, when purchasing, leasing,
5 renting, or otherwise acquiring, disposing of, or maintaining
6 equipment, proprietary software, or purchased services using a
7 competitive bidding process cannot reject all bids and cancel the
8 solicitation after the bid opening unless there is a compelling reason.

9 (2) Every effort shall be made to anticipate changes in a
10 requirement before the date of opening and to provide reasonable notice
11 to all prospective bidders of any resulting modification or
12 cancellation. If, in the opinion of the director or purchasing agency
13 head, it is not possible to provide reasonable notice, the published
14 date for receipt of bids may be postponed and all known bidders
15 notified. This will permit bidders to change their bids and prevent
16 unnecessary exposure of bid prices. In addition, every effort shall be
17 made to include realistic, achievable requirements in a solicitation.

18 (3) After the opening of bids, a solicitation may not be canceled
19 and resolicited solely because of an increase in requirements for the
20 items being acquired. Award may be made on the initial solicitation
21 and an increase in requirements may be treated as a new acquisition.

22 (4) A solicitation may be canceled and all bids rejected before
23 award but after bid opening only when, consistent with subsection (1)
24 of this section, the board or purchasing agency, determines in writing
25 that:

26 (a) Unavailable, inadequate, ambiguous specifications, terms,
27 conditions, or requirements were cited in the solicitation;

28 (b) Specifications, terms, conditions, or requirements have been
29 revised;

30 (c) The supplies or services being contracted for are no longer
31 required;

32 (d) The solicitation did not provide for consideration of all
33 factors of cost to the board or agency;

34 (e) Bids received indicate that the needs of the board or agency
35 can be satisfied by a less expensive article differing from that for
36 which the bids were invited;

37 (f) All otherwise acceptable bids received are at unreasonable

1 prices or only one bid is received and the board or agency cannot
2 determine the reasonableness of the bid price;

3 (g) No responsive bid has been received from a responsible bidder;
4 or

5 (h) The bid process was not fair or equitable.

6 (5) The agency head may not delegate his or her authority under
7 this section."

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8 On page 1, line 1 of the title, after "bidding;" strike the
9 remainder of the title and insert "amending RCW 43.19.1906, 43.19.1908,
10 and 43.19.1911; adding a new section to chapter 39.04 RCW; adding a new
11 section to chapter 39.29 RCW; and adding a new section to chapter
12 43.105 RCW."

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